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IN THE

Supreme Court of the United States

October Term, 1961.

No. 282.

ATLANTIC AND GULF STEVEDORES, INC.,
Petitioner,

v.

ELLERMAN LINES, LTD.
and
THE CITY LINE, LTD.,
Respondents.

ANSWER TO REPLY BRIEF FOR RESPONDENTS.

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ANSWER TO REPLY BRIEF FOR RESPONDENTS.

This Honorable Court granted leave to respondents in the above captioned matter to file a simple memorandum of cases sustaining the point which its counsel made at argument, namely, that in the United States District Court for the Eastern District of Pennsylvania it is common practice not to file a motion for directed verdict pursuant to Rule 50 and that instead the courts of that District require no more than compliance with the State practice of filing only a point for binding instructions. In their Reply Brief, respondents cite no such cases or authorities. Indeed, there are none to support the contention of the respondents.

The colloquy referred to in the Reply Brief (p. 1113 original notes) clearly demonstrates that there was no compliance with Rule 50 orally or in writing, and that respondents were simply renewing their prior motion for binding instructions in the action between plaintiff and respondents, and were not then making any motion in the third party action as against the petitioner. Their failure to make any motion under Rule 50, with reasons as required, at the close of the case against petitioner, precludes any reversal of the judgment or any direction to reverse such judgment, in the case between respondents and petitioner. The cases supporting this point are fully briefed in Petitioner's Reply Brief. It will be recalled that respondents asserted at the argument, in response to a question, that the effect of the lower court's ruling was to enter judgment. Since the original Brief for Respondents predicated its second and third questions presented directly upon the deliberate but now admittedly erroneous statement, that respondents had filed a motion for directed verdict under Rule 50, it was obviously incumbent upon petitioner to point out this error in its Reply Brief to maintain the integrity of the facts in aid of this Court and not as respondents cynically suggest "to distract the attention of the Court from the main issues in the case . . ."

The plain fact is that *in this very case*, as the docket entries (R. 3a) and record (R. 186a) reflect, both the plaintiff and petitioner filed with the court, and served upon respondents, motions for a directed verdict in strict accordance with Rule 50. Respondents were thus fully aware of the necessity for such motion but never did more at the trial than request binding instructions by way of a point for charge, as to the petitioner.

Respectfully submitted,

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